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NO.: A - 267, November 20, 1958

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INFO

SUBJECT: Reply to Mexican Note on Extent of the Territorial Sea

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TO: The American Embassy, MEXICO, D. F.

The Embassy is requested in its discretion to transmit to the Mexican Ministry of Foreign Affairs a note embodying essentially the following language in response to that Ministry's note to the Embassy dated December 22, 1956 enclosed with the Embassy's despatch No. 613 of January 9, 1957:

My Government has instructed me to refer to Your Excellency's note No. 508697 of December 22, 1956, acknowledging receipt of the Embassy's notes Nos. 1 of July 3 and 559 of November 13, 1956, protesting the seizure by Mexican naval authorities of 17 shrimp fishing vessels and requesting the return of the fines assessed and of the value of the confiscated gear and fish.

In rejecting my Government's protest and indicating the Government of Mexico's unwillingness to return the fines and value of confiscated goods Your Excellency contended that Mexico had violated no rights to which the American fishermen were entitled on the high seas since the seizures were made in areas claimed by Mexico as territorial waters. To support that claim Your Excellency endeavored to establish a non-obligatory character for the three-mile rule in view of the disposition of a number of countries to appropriate by unilateral action greater areas of the seas as territorial waters. Independently of the resultant view held by the Government of Mexico to the effect that reasonable and prudent enlargements of territorial waters by unilateral action are permissible under international law, Your Excellency also rested Mexico's claim to nine marine miles of territorial seas on its interpretation of a provision of the Treaty of Peace, Friendship and Limits of February 2, 1848 entered into between our two countries.

I am instructed to advise Your Excellency that after careful consideration of the reasoning advanced in the note under acknowledgment, my Government's views concerning the applicability of the

three-mile

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three-mile rule and the non-applicability of the Treaty of February 2, 1848 to territorial waters continue to be opposed to those expressed by Your Excellency's Government. For the reasons set forth in the following discussion my Government reiterates its protests against the seizures of United States fishing vessels in the areas of the high seas and renews its requests that the Government of Mexico return the fines assessed and the value of the confiscated gear and fish.

It is perhaps unnecessarily repetitive to discuss basic differences minutely in correspondence dealing essentially with my Government's protest for the seizure of fishing vessels, especially in light of the fact that a universal forum is already being utilized for determination of the extent of territorial seas on a world-wide basis. Without detracting from other arguments employed in the past by the United States Government in support of the traditional concept of territorial waters, I invite Your Excellency's attention to current efforts of the nations of the world to determine the extent of the territorial seas under international law by more orderly and legitimate means than the unilateral and diverse practices of some States. This provides eloquent proof of the universal view that the rights and obligations of States in this respect under international law require elucidation solely through procedures which will leave no doubt concerning the legitimacy of the conclusions reached. My Government is convinced that the nations of the world have fully sanctioned this view by resorting to the procedures of the recent United Nations Conference on the Law of the Sea. Since that Conference did not result in adoption of a concept of territorial waters varying from the traditional, including that which is set forth in Your Excellency's note under acknowledgment, the traditional three miles remains the greatest distance on which there is general agreement, and this traditional rule must logically continue to govern unless the nations of the world see fit to agree on some other distance through the common facilities available to them in these enlightened times.

Your Excellency is familiar with the compromise proposal that my Government introduced during the closing stages of the Law of the Sea Conference. My Government hoped to reconcile the outstanding differences to an extent sufficient to achieve agreement on the breadth of the territorial sea. The United States compromise engendered a reciprocal spirit of compromise on the part of many countries, and the final vote saw the United States compromise proposal narrowly miss obtaining the two-thirds majority required for incorporation in the Convention. Indeed, the United States proposal was the only one which obtained the affirmative vote of a majority of the eighty-six Conference participants.

Nevertheless the United States proposal was a compromise proposal in an effort to achieve agreement on the breadth of the territorial sea. When that effort failed, the Chairman of the American Delegation to the Conference, Arthur H. Dean, stated: "Our offer to agree on a six-mile breadth of the territorial sea, provided agreement could be reached on such a breadth under certain conditions, was simply an offer and nothing more. Its non-acceptance

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leaves the pre-existing situation intact.

"We have made it clear from the beginning," Mr. Dean continued, "that in our view the three-mile rule is and will continue to be established international law, to which we adhere. It is the only breadth of the territorial sea on which there has ever been anything like common agreement. Unilateral acts of States claiming greater territorial seas are not only not sanctioned by any principle of international law, but are, indeed, in conflict with the universally accepted principle of freedom of the seas."

Mr. Dean noted further that "we have made it clear that in our view there is no obligation on the part of States adhering to the three-mile rule to recognize claims on the part of other States to a greater breadth of the territorial sea. On that we stand."

Your Excellency referred to the provision in the Treaty of February 2, 1948 that "The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the Rio Grande" in support of a claim that the United States has recognized a nine-mile territorial sea for Mexico. The United States has carefully examined the negotiating history of the 1848 treaty and the contemporary correspondence and finds no basis whatever for the Mexican Government's claim. The treaty did not deal with the territorial sea of either country, and the article in question was concerned with establishing the boundary between the two Republics. My Government considers that the treaty stipulation for a three-league extension of the boundary in Gulf waters can no more serve as a valid basis for Mexico's claim of a nine-mile territorial sea in the Gulf than could the provision in the same article of the treaty establishing the boundary as ending at the Pacific Ocean serve as a basis for contending that Mexico has no territorial sea whatever. The breadth of the territorial sea is a question of international law and not a matter for bilateral arrangement, as the Mexican Government's note recognizes.

Your Excellency also raises the principle of reciprocity to illustrate the fact that no State can require of another territorial waters less than those claimed by the first for itself. Comment on the Submerged Lands Act in this connection appears to be inappropriate at this time for, as your Excellency is aware, the interpretation of the act in question is presently pending before the Supreme Court of the United States.

My Government has instructed me to refer to the concluding statement made by the Chairman of the United States Delegation on the closing day of the Conference on the Law of the Sea. Mr. Arthur H. Dean said, among other things:

"While we consider that the three-mile rule is existing international law, nevertheless we are still optimistic that upon reflection the great majority of our good friends in the international community will come to realize that inter-

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national agreement on the breadth of the territorial sea and on fishing rights is necessary in order that a regime of law may be effected and that the diverse and often conflicting interests of national states may not jeopardize the peace of the international community.

"To this end we pledge our cooperation."

I take this opportunity to extend to Your Excellency's Government, and to you personally, this pledge of cooperation. It is my hope that we may soon be able to find ways and means whereby this wish to cooperate can be demonstrated and whereby the differences between the two Governments in this respect can be eliminated. My Government would welcome any suggestion Your Excellency can make to conciliate the views of our respective Governments. End of Note.

For the Embassy's information, the Department feels that response to the note of December 22, 1956 should be made to the present Mexican Administration. The reply attempts at once to answer the Mexican arguments with as little contentious debate as possible, and to look forward to a concerted effort to adjust the existing differences on a practical basis. It is hoped that, arriving just before a change in administration it can serve to keep the record straight, and at the same time encourage the new Administration to propose or take under serious consideration propositions designed to settle the shrimp fishery problem. The Embassy may wish in presenting the reply to explain orally that preparation for the UN Conference on the Law of the Sea, the Conference itself, and subsequent developments in that connection occasioned the delay in its presentation.

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